

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL A. MARTINDALE,

Plaintiff,

vs.

PAUL REES, M.D.,

Defendant.

CV 18-00095-H-BMM-JTJ

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

Mail sent by the Court to Plaintiff Michael Martindale on February 12, 2019 and February 27, 2019 was returned as undeliverable with an indication that Mr. Martindale was no longer incarcerated at Montana State Prison. (Docs. 16, 18.) The Montana Department of Corrections website indicates that Mr. Martindale has been paroled and the Clerk of Court forwarded these mailings to Mr. Martindale in care of Missoula Probation and Parole.

The Local Rules for the District of Montana provide:

- (b) Dismissal Due to Failure to Notify. The court may dismiss a complaint without prejudice or strike an answer when:
 - (1) a document directed to the attorney or self-represented party by the court has been returned to the court as not deliverable; and
 - (2) the court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for

service.

L.R. 5.3(b).

Mr. Martindale was advised in the Court's September 27, 2018 Notice of Case Opening (Doc. 3 at 2), the Court's Order dated October 24, 2018 (Doc. 5 at 5), and the Court's January 9, 2019 Scheduling Order (Doc. 13 at 9) that he must immediately inform the Clerk of Court of any change in his address and a failure to do so could result in dismissal of his case. It has been more than 60 days since the return of written communication from the Court addressed to Mr. Martindale's address of record and Mr. Martindale has not filed a notice of change of address.

ACCORDINGLY, IT IS HEREBY RECOMMENDED that this action DISMISSED without prejudice pursuant to L.R. 5.3(b). The Clerk of Court is directed to mail a copy of this Order to Mr. Martindale at his address of record and in care of Missoula Probation and Parole.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Martindale may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that "[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a)." Therefore, since Mr. Martindale is being

to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 1st day of May, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge

served by mail, he is entitled an additional three (3) days after the period would otherwise expire.